

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ANTHONY PIERCE §
v. § CIVIL ACTION NO. 6:14cv886
TODD FOXWORTH, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Anthony Pierce, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On December 15, 2014, the magistrate judge ordered Pierce to pay an initial partial filing fee of \$40.50 or to show good cause for the failure to do so, pursuant to 28 U.S.C. §1915(b). Pierce did not comply with this order or respond to it in any way. The magistrate judge thereupon issued a report recommending that the lawsuit be dismissed without prejudice, with the statute of limitations suspended for a period of 60 days following the date of entry of final judgment in the case. *See Mills v. Criminal District Court No. 3*, 837 F.2d 677 (5th Cir. 1988); *Rodriguez v. Holmes*, 963 F.2d 799 (5th Cir. 1992).

In response, Pierce filed an “out of time affidavit” complaining that the magistrate judge did not liberally construe his complaint and disregarded his endeavors “to make any procedural rectification of his complaint against state officials.” He further contends that the magistrate judge is biased and prejudiced against him and that his *in forma pauperis* application form shows that he was unable to pay the fee.

A review of the docket confirms that no response was received from Pierce to the order for the initial partial filing fee, although he was specifically advised that he had to pay the fee or show good cause for his failure to do so. His application for leave to proceed *in forma pauperis* states that he received \$375.00 from his friends and family over the past year, which understates his assets; Pierce's data sheet shows that in fact, he received \$610.00 over the preceding six months. The data sheet lists his balance as of November 12, 2014, at \$5.48, but Pierce did not furnish an updated data sheet or otherwise show that he was unable to pay the initial partial filing fee as of the time that this fee was assessed, in January of 2015. His objections fail to show any basis upon which to set aside the report of the magistrate judge.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the report of the magistrate judge and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the report of the magistrate judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the report of the magistrate judge (docket no. 10) is hereby **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims raised in this lawsuit is hereby **SUSPENDED** for a period of sixty (60) days following the date of entry of final judgment in this case. The suspension of the statute of limitations will not affect any claims which were already barred by the operation of that statute at the time that this lawsuit was filed; such claims would remain barred regardless of any suspension of the limitations period. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby
DENIED.

It is SO ORDERED.

SIGNED this 4th day of May, 2015.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE